

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRAD EDWARDS,

Plaintiff,

v.

LOCKHEED MARTIN CORP.,

Defendant.

NO: 12-CV-5057-TOR

ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT

BEFORE THE COURT are Plaintiff's Motion for Summary Judgment (ECF No. 20), Defendant's Motion for Summary Judgment (ECF No. 25), and Plaintiff's Motion for Reconsideration (ECF No. 55). These matters were heard with oral argument on June 19, 2013. Plaintiff was represented by Mary E. Schultz. Defendant was represented by Thaddeus J. O'Sullivan. The Court has reviewed the briefing, the record and files herein, has the benefit of oral argument and is fully informed.

//

BACKGROUND

This is a breach of contract action to enforce a voluntary separation agreement between Plaintiff Brad Edwards (“Plaintiff”), and his former employer, Defendant Lockheed Martin Corp. (“Defendant”). Plaintiff alleges that Defendant breached its obligation to pay him severance benefits in exchange for voluntarily terminating his employment under the Lockheed Martin Voluntary Executive Separation Plan. *See* ECF No. 2 at 9-15 (Complaint). In his Memorandum in Support of Summary Judgment, Defendant more narrowly avers that this is merely a simple breach of contract action, that contract being the Release of Claims he signed on January 31, 2011. *See* ECF No. 22.

Defendant contends that Plaintiff’s breach of contract claims are preempted by ERISA because they relate to the administration of an employee benefit plan and the Release of Claims form is but one aspect of the overall plan. In the alternative, Defendant contends Plaintiff forfeited his right to receive the severance benefit by claiming reimbursement for inaccurately-documented travel expenses. For the reasons discussed below, the Court finds that Plaintiff’s claims are preempted by ERISA and must be dismissed for lack of subject-matter jurisdiction.

FACTS

Plaintiff is a former employee of Defendant Lockheed Martin Corporation. At all times relevant to this lawsuit, Plaintiff was employed as a Director of

1 Contracts in Defendant's Information Systems and Global Solutions division. ECF
2 No. 51 at ¶ 3. His primary responsibility in this role was to ensure that Defendant
3 satisfied its contractual obligations to the federal government and complied with
4 the Federal Acquisition Regulations. Edwards Dep., ECF No. 27-2, at Tr. 44-45.
5 Plaintiff was also authorized to enter into contracts with the federal government on
6 behalf of Lockheed Martin. Edwards Dep., ECF No. 27-2, at Tr. 45.

7 On July 6, Defendant's Chairman and CEO announced to Plaintiff and other
8 management-level employees that the company had implemented a force reduction
9 program known as the Voluntary Executive Separation Program ("VESP"). ECF
10 No. 21-1 at EDWARDS 000011-000012. In broad terms, this program offered
11 certain employees a one-time lump sum payment in exchange for voluntarily
12 terminating their employment within a specified time period, with the payment
13 offered to each employee varying based upon his or her years of service with the
14 company. ECF No. 21-1 at EDWARDS 000011.

15 Shortly after the program was announced, Defendant's Senior Vice
16 President of Human Resources sent an email to Plaintiff and all other eligible
17 employees which explained the program in further detail. ECF No. 21-1 at
18 EDWARDS 000013-000014. Included in this email was a hyperlink to a page
19 containing "program highlights with questions and answers." ECF No. 21-1 at
20 EDWARDS 000014; Walton Decl., ECF No. 58, at ¶ 10. By clicking on this link,

1 the reader of the email could access a more detailed summary of the VESP
2 program and answers to several “Frequently Asked Questions.” ECF No. 21-1 at
3 EDWARDS 000015-000029; Walton Decl., ECF No. 58, at ¶ 11.

4 As relevant here, the first page of this more detailed summary contained
5 active hyperlinks to the following VESP-related documents:

- 6 • Program Highlights
- 7 • Informational Resources
- 8 • Questions and Answers
- 9 • Official Plan Document
- Application Form
- Sample Release of Claims Document

10 ECF No. 21-1 at EDWARDS 000015 (underlined emphasis for hyperlinks in
11 original); Edwards Dep., ECF No. 60-1, at Tr. 126-27; Walton Decl., ECF No. 58,
12 at ¶¶ 12-14. Also appearing on the first page was the following disclaimer: “This
13 document provides highlights of the program. The Plan Document is the
14 authoritative source for the program terms and conditions.” ECF No. 21-1 at
15 EDWARDS 000015 (underlined emphasis for hyperlink in original).

16 Clicking on either of the hyperlinks for the “Plan Document” would take the
17 reader to a document entitled “Lockheed Martin Corporation Special Termination
18 Plan for Certain Management Employees.” ECF No. 28-1. This document
19 (hereafter the “VESP Plan” or “Plan”) was approved by Defendant’s Board of
20 Directors on June 24, 2010. Block Decl., ECF No. 59, at ¶¶ 16-20. In pertinent

1 part, the VESP Plan states that it “is intended to constitute an employee welfare
2 benefit plan under the Employee Retirement Income Security Act of 1974
3 (“ERISA”) that provides termination benefits to a select group of management or
4 highly compensated employees.” ECF No. 28-1 at 1. The Plan further specifies
5 that participation by any eligible employee is contingent upon “accept[ance] by the
6 Senior Vice President, Human Resources, in his discretion and in consultation with
7 business area corporate functional leadership.” ECF No. 28-1 at 3.

8 Plaintiff applied for the VESP program on September 7, 2010. ECF No. 21-
9 1 at EDWARDS 000031-000034. Defendant accepted Plaintiff’s application on
10 September 21, 2010. ECF No. 21-1 at EDWARDS 000035. In a letter dated
11 October 4, 2010, Defendant advised Plaintiff that his total estimated termination
12 benefit under the VESP Plan would be \$254,353.40. ECF No. 21-1 at EDWARDS
13 000036. Plaintiff subsequently resigned his employment on January 31, 2011. He
14 executed a standard form “Release of Claims” document on the same day. ECF
15 No. 21-2 at EDWARDS 000086-000093.

16 Shortly after resigning his employment, Plaintiff submitted a claim for
17 reimbursement of travel expenses in the amount of \$4,700. Due to the large
18 amount of money involved, Defendant flagged Plaintiff’s reimbursement request
19 for “reconciliation.” Raudenbush Decl., ECF No. 32, at ¶ 13. During the
20 reconciliation process, Defendant identified “unusual activity” on Plaintiff’s

1 expense account. Raudenbush Decl., ECF No. 32, at ¶ 14. This discovery
2 prompted Defendant to perform an audit of expenses submitted from June 2006 to
3 December 2010. Raudenbush Decl., ECF No. 32, at ¶¶ 16-17.¹

4 Based upon the results of this audit, Defendant concluded that Plaintiff had
5 “collect[ed] \$42,741.16 in expense reimbursements that he was not entitled to
6 receive.” Raudenbush Decl., ECF No. 32, at ¶ 17. According to Defendant’s
7 auditor, the majority of the improper reimbursements stemmed from Plaintiff
8 “requesting lodging reimbursement based on [his] location of work rather than
9 [his] location of lodging.” Raudenbush Decl., ECF No. 32, at ¶ 18. “By
10 requesting per diem reimbursement based on place of work rather than the place of
11 lodging,” the auditor concluded, “Plaintiff received approximately \$100.00 more
12 per day than he was entitled to receive under Defendant’s Travel Policy.”
13 Raudenbush Decl., ECF No. 32, at ¶ 21.

14 In a letter dated July 15, 2011, Defendant informed Plaintiff that, as a result
15 of his improper expense reporting, he was ineligible to receive a termination
16 benefit under the VESP Plan:

17
18 ¹ The Declaration of Matthew Raudenbush contains two consecutive paragraphs
19 which are numbered 17. *See* ECF No. 32. In the interest of clarity, the Court has
20 designated the latter of these two paragraphs as “17A.”

1 The Information Systems and Global Solutions (“IS&GS”) business
2 area has advised that you submitted improper expense reports during
3 your period of employment with the Corporation. This resulted in the
4 violation of the Corporation’s policies, including but not limited to
5 CPS-001, Ethics and Business Conduct. Under Section 7(a) of the
6 VESP document, the Corporation “retains the right to condition
7 payment of a Termination benefit upon the Eligible Employee
8 maintaining fully satisfactory work performance until the Eligible
9 Employee’s Termination Date.” The Corporation has decided that
10 you failed to maintain satisfactory work performance by submitting
11 improper expense reports in violation of the Corporation’s policies.

12 In addition, IS&GS has advised that your termination has been
13 reclassified as a termination for cause due to your submission of
14 improper expense reports. Section 3 of the VESP provides that an
15 employee will not be entitled [to] a Termination Benefit if the
16 employee is terminated for “Cause.” . . . The Corporation has
17 determined that your submission of improper expense reports in
18 violation of the Corporation’s policies meets the definition of a for
19 “Cause” termination under the VESP.

20 For these reasons, the Corporation has determined that you are
ineligible to receive payment of a Termination Benefit under the
VESP. If you disagree with the decision in this matter, you may
submit a written statement to the Claims Administrator within 120
days of the date of this letter.

ECF No. 21-2 at EDWARDS 000127-000128; *see also* ECF No. 21-2 at
EDWARDS 000129 (“Based on the results of the audit . . . had you been a current
employee, you would have been terminated for cause due to your misconduct.”).

Plaintiff appealed Defendant’s decision to the VESP Claims Administrator
on October 17, 2011. ECF No. 21-2 at EDWARDS 000131-000132. This appeal
was subsequently considered by the VESP Appeals Committee, which affirmed the

1 denial of benefits in a letter dated December 9, 2011. ECF No. 21-2 at
2 EDWARDS 000135-000137. This lawsuit followed. Plaintiff's causes of action
3 are limited to common law breach of contract claims. Plaintiff has not asserted a
4 claim to recover benefits due under an employee benefit plan pursuant to ERISA
5 § 502(a). *See* 29 U.S.C. § 1132(a)(1)(B) (creating cause of action in favor of
6 ERISA plan beneficiary "to recover benefits due to him under the terms of his
7 plan, to enforce his rights under the terms of the plan, or to clarify his rights to
8 future benefits under the terms of the plan").

9 DISCUSSION

10 Summary judgment may be granted under Rule 56(a) upon a showing by the
11 moving party "that there is no genuine dispute as to any material fact and that the
12 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The
13 moving party bears the initial burden of demonstrating the absence of any genuine
14 issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
15 burden then shifts to the non-moving party to identify specific genuine issues of
16 material fact which must be decided by a jury. *See Anderson v. Liberty Lobby,*
17 *Inc.*, 477 U.S. 242, 256 (1986). "The mere existence of a scintilla of evidence in
18 support of the plaintiff's position will be insufficient; there must be evidence on
19 which the jury could reasonably find for the plaintiff." *Id.* at 252.

1 For purposes of summary judgment, a fact is “material” if it might affect the
2 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
3 such fact is “genuine” only where the evidence is such that a reasonable jury could
4 find in favor of the non-moving party. *Id.* In ruling on a summary judgment
5 motion, a court must construe the facts, as well as all rational inferences therefrom,
6 in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372,
7 378 (2007). Finally, the court may only consider evidence that would be
8 admissible at trial. *Orr v. Bank of America, NT & SA*, 285 F.3d 764 (9th Cir.
9 2002).

10 **A. ERISA Preemption**

11 The Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*
12 (“ERISA”), provides for federal regulation of private employee benefit plans.
13 Congress’ purpose in enacting ERISA was to create a uniform regulatory regime
14 that would “protect employers from conflicting and inconsistent state and local
15 regulation of [employee benefit] plans.” *Henkin v. Northrop Corp.*, 921 F.2d 864,
16 867 (9th Cir. 1990). To that end, Congress passed ERISA with “expansive pre-
17 emption provisions” designed to ensure that the regulation of employee benefit
18 plans remains “exclusively a federal concern.” *Aetna Health Inc. v. Davila*, 542
19 U.S. 200, 208 (2004) (internal citations and quotation omitted).

20 ///

1 1. Admissibility of VESP Plan Document

2 As a threshold matter, the Court must address Plaintiff's various arguments
3 concerning the admissibility and relevance of the VESP Plan document. Contrary
4 to Plaintiff's assertions, this document has been properly and independently
5 authenticated by at least two witnesses with personal knowledge of its contents.
6 *See* Filomeo Decl., ECF No. 30, at ¶¶ 3-6; Block Decl., ECF No. 59, at ¶¶ 2-20.
7 Based upon the testimony of these witnesses, the Court finds that the document
8 entitled "Exhibit A – Lockheed Martin Corporation Special Termination Plan for
9 Certain Management Employees" is the official VESP Plan document adopted by
10 the Board of Directors of Lockheed Martin Corporation on June 24, 2010. Indeed,
11 this document is "an exact and complete copy" of the Plan "in the exact form
12 approved by [Defendant's] Management Development and Compensation
13 Committee" prior to being adopted by the full Board. Block Decl., ECF No. 59, at
14 ¶¶ 18, 20. As such, the document is both relevant and admissible. Plaintiff's
15 assertions to the contrary are wholly unavailing.

16 The Plan document is also clearly part of the parties' contract. First, the
17 Plan is expressly integrated with the Release of Claims document: "The Plan and
18 this Release contain all the agreements between me and the Corporation relating to
19 my termination of employment." ECF No 21-2 at EDWARDS 000091. Second,
20 the Release of Claims Plaintiff signed expressly refers to the Plan by both its

1 official and informal names in bold print in the opening paragraph: “In order to be
 2 eligible for the *Lockheed Martin Corporation Special Termination Plan for*
 3 *Certain Management Employees*, also known as the *Voluntary Executive*
 4 *Separation Program*, [this] signed Release of Claims must be delivered to
 5 Lockheed Martin Human Resources . . . no later than the 45th calendar day from
 6 your termination date.” ECF No. 21-2 at EDWARDS 000086 (emphasis added).
 7 Third, the Release of Claims clearly states that the bargained-for severance benefit
 8 is being paid “pursuant to” the Plan:

9 [U]nder the Lockheed Martin Corporation Special Termination Plan
 10 for Certain Management Employees, also known as the Voluntary
 11 Executive Separation Program (hereinafter the “Plan”), *if I voluntarily*
*elect to sign this Release, the Corporation, **pursuant to the Plan**, will*
pay me the Termination Benefit, as defined in the Plan[.]

12 ECF No. 21-2 at EDWARDS 000086 (emphasis added). Accordingly, there is
 13 absolutely no merit to Plaintiff’s assertion that the VESP Plan is an “extra-
 14 contractual document.” Indeed, the VESP Plan *is* the contract, and executing the
 15 Release of Claims was simply one of Plaintiff’s obligations under that contract.

16 2. Preemption

17 The specific preemption provision at issue in this case, 29 U.S.C. § 1144(a),
 18 provides that ERISA “shall supersede any and all State laws insofar as they may
 19
 20

1 now or hereafter relate to any employee benefit plan.”² 29 U.S.C. § 1144(a). The
2 dispositive question for purposes of Defendant’s preemption challenge is whether
3 the VESP Plan qualifies as an employee benefit “plan” within the meaning of
4 § 1144(a). Unfortunately, ERISA itself “provides little assistance” in answering
5 this question. *Emery v. Bay Capital Corp.*, 354 F. Supp. 2d 589, 591 (D. Md.
6 2005). Because the terms “employee benefit plan” and “plan” are defined “only
7 tautologically,” in the text of the statute, courts faced with preemption challenges
8 must pay particular attention to the underlying purpose of § 1144(a). *Fort Halifax*
9 *Packing Co., Inc. v. Coyne*, 482 U.S. 1, 9 (1987); *see also Graham v. Balcors, Co.*,
10 146 F.3d 1052, 1055 (9th Cir. 1998) (“In analyzing any preemption question, ‘the

12 ² At oral argument, Plaintiff’s counsel argued that the two-prong test discussed in
13 *Marin Gen. Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941 (9th Cir.
14 2009) provides the appropriate framework for analyzing the preemption issue.
15 Like the parties in the *Marin* case, however, counsel “ha[s] not clearly understood
16 the difference between complete preemption under ERISA § 502(a), 29 U.S.C. §
17 1132(a), and conflict preemption under ERISA § 514(a), 29 U.S.C. § 1144(a).”
18 581 F.3d at 944-45. Defendant has moved to dismiss Plaintiff’s claims as
19 preempted under ERISA § 514(a) because they “relate to” an ERISA plan. *See id.*
20 at 945. The complete preemption analysis discussed in *Marin* does not apply.

1 purpose of Congress is the ultimate touchstone.”) (quoting *Medtronic, Inc. v.*
2 *Lohr*, 518 U.S. 470, 485 (1996)).

3 As the Supreme Court articulated in *Fort Halifax*, the one overarching
4 purpose of § 1144 is to ensure that employers do not become paralyzed by
5 “conflicting or inconsistent” state and federal regulation of benefit plans:

6 An employer that makes a commitment systematically to pay certain
7 benefits undertakes a host of obligations, such as determining the
8 eligibility of claimants, calculating benefit levels, making
9 disbursements, monitoring the availability of funds for benefit
10 payments, and keeping appropriate records in order to comply with
11 applicable reporting requirements. The most efficient way to meet
12 these responsibilities is to establish a uniform administrative scheme,
13 which provides a set of standard procedures to guide processing of
claims and disbursement of benefits. Such a system is difficult to
achieve, however, if a benefit plan is subject to differing regulatory
requirements in differing States. A plan would be required to keep
certain records in some States but not in others; to make certain
benefits available in some States but not in others; to process claims in
a certain way in some States but not in others; and to comply with
certain fiduciary standards in some States but not in others.

14 * * *

15 Obligating the employer to satisfy the varied and perhaps conflicting
16 requirements of particular state fair employment laws would make
17 administration of a nationwide plan more difficult. Such a situation
18 would produce considerable inefficiencies, which the employer might
19 choose to offset by lowering benefit levels. . . . ERISA’s
20 comprehensive pre-emption of state law was meant to minimize this
sort of interference with the administration of employee benefit plans,
so that employers would not have to administer their plans differently
in each State in which they have employees.

1 482 U.S. at 9-10 (internal quotations and citations omitted). In sum, § 1144(a)
2 exists to ensure “that the administrative practices of a benefit plan will be governed
3 by only a single set of regulations.” *Id.* at 11.

4 Despite this strong preference for uniform regulation, however, § 1144(a) is
5 expressly limited in scope. As the *Fort Halifax* Court explained, state laws are
6 only preempted to the extent that they relate to employee benefit *plans*:

7 Congress intended pre-emption to afford employers the advantages of
8 a uniform set of administrative procedures governed by a single set of
9 **benefits whose provision by nature requires an ongoing**
10 **administrative program to meet the employer’s obligation.** It is
11 for this reason that Congress pre-empted state laws relating to *plans*,
rather than simply to *benefits*. Only a plan embodies a set of
administrative practices vulnerable to the burden that would be
imposed by a patchwork scheme of regulation.

12 *Id.* at 11-12 (bold emphasis added). From this language in *Fort Halifax*, “a
13 relatively simple test has emerged to determine whether a plan is covered by
14 ERISA: does the benefit package implicate an *ongoing administrative scheme*?”
15 *Delaye v. Agripac, Inc.*, 39 F.3d 235, 237 (9th Cir. 1994) (emphasis added) (citing
16 *Fort Halifax*, 482 U.S. at 12).

17 In the Ninth Circuit, an “ongoing administrative scheme” is implicated
18 where the employer is required to exercise a significant degree of discretion in
19 determining eligibility for the plan and/or in awarding benefits to participants.
20 Compare *Bogue v. Ampex Corp.*, 976 F.2d 1319, 1323 (9th Cir. 1992) (ongoing

1 administrative scheme requirement satisfied where “the program’s administration
2 required a case-by-case, discretionary application of its terms”), *with Velarde v.*
3 *PACE Membership Warehouse, Inc.*, 105 F.3d 1313, 1317 (9th Cir. 1997)
4 (requirement not satisfied where “[t]he level of discretion, if any, which [the
5 employer] was required to exercise in implementing the agreement was slight”). In
6 other words, where a plan requires an employer to make eligibility and benefits
7 decisions on an individual case basis—such that there is effectively “no way to
8 administer the program *without* an administrative scheme”—the plan will satisfy
9 the ongoing administrative scheme requirement. *Bogue*, 976 F.2d at 1323
10 (emphasis added). Where a plan merely requires the employer to take a series of
11 unthinking, pre-determined actions, by contrast, there is no ongoing administrative
12 scheme subject to regulation under ERISA. *See Delaye*, 39 F.3d at 237 (no
13 ongoing administrative scheme implicated where employer was merely required to
14 make “a straightforward computation of a one-time obligation”).

15 Since *Fort Halifax* was decided, courts have recognized that severance
16 packages may or may not satisfy ERISA’s “ongoing administrative scheme”
17 requirement depending upon how they are structured. *See Delaye*, 39 F.3d at 237
18 (“Provisions for severance pay may [or may not] constitute an employee welfare
19 benefit plan within the meaning of ERISA.”); *Velarde*, 105 F.3d at 1316 (“The
20 definition of ‘employee benefit plan’ [under ERISA] can include severance

benefits.”). Traditional severance packages, which call for nothing more than a one-time, lump-sum payment, generally do not satisfy the requirement. Because such plans “require[] no administrative scheme whatsoever to meet the employer’s obligation,” they are not subject to regulation under ERISA. *Fort Halifax*, 482 U.S. at 12. On the other hand, severance packages which require the employer to exercise discretion in making eligibility determinations are generally sufficient to implicate an ongoing administrative scheme. *See Bogue*, 976 F.2d at 1323 (ongoing administrative scheme requirement satisfied where employer was required to make “a case-by-case, discretionary” decision about whether employees had obtained a job “substantially equivalent” to their prior employment).

Here, Defendant contends that the VESP Plan implicates an ongoing administrative scheme for three reasons: (1) because eligibility decisions are made on an individual, case-by-case basis in Defendant’s sole discretion; (2) because the Claims Administrator must determine whether an enrolled employee has been terminated for cause prior to awarding severance benefits; and (3) because terms of the Plan provide for an administrative appeal of any decision rendered by the Claims Administrator. ECF No. 25 at 9-12. In Defendant’s view, each of these features of the Plan is sufficient to satisfy the ongoing administrative scheme requirement.

1 Defendant's second contention is foreclosed by *Velarde*. There, the Ninth
2 Circuit held that conditioning a severance payment on an employee maintaining
3 satisfactory work performance and not being terminated for cause implicates only a
4 "minimal quantum of discretion" on the part of the employer. *Velarde*, 105 F.3d at
5 1317. As such, this type of "eligibility requirement" does not implicate an ongoing
6 administrative scheme for purposes of ERISA preemption under § 1144(a). *Id.*

7 Defendant's first and third contentions are more persuasive. As Defendant
8 correctly notes, the plain language of the Plan calls for Defendant to make
9 individualized case-by-case decisions about which employees are eligible to
10 participate. Specifically, the Plan provides that any request to enroll must be
11 "accepted by the Senior Vice President, Human Resources, *in his discretion* and *in*
12 *consultation with business area corporate functional leadership.*" ECF No. 28-1 at
13 Section 2(c) (emphasis added); *see also* ECF No. 28-1 at Section 8 ("The
14 Company shall have the sole discretion . . . to accept or reject any Employee's
15 request to terminate employment under the [enrollment] Window."). This
16 provision allows Defendant to deny enrollment to any otherwise qualified
17 employee based upon the specific needs of a particular business unit. As
18 Defendant explained on the day the Plan was announced,

19 **[Question] 10: Can Lockheed Martin refuse eligible leaders the**
20 **right to take advantage of this special program and, if so, will the**

1 **fact that they volunteered impact decisions about them in the**
2 **future?**

3 [Answer:] *Unless there are extenuating circumstances or severe*
4 *program impacts*, requests to participate in the program will be
5 accepted. All denied requests will be subject to review by the Senior
6 Vice President of Human Resources for Lockheed Martin. The plan
contains an appeal process for denials and other issues. Electing to
participate will not adversely impact the Corporation's view of an
individual.

7 ECF No. 21-1 at EDWARDS 000018 (emphasis added). Notably, the record
8 reflects that at least six (6) out of approximately six hundred eligible employees
9 were denied enrollment in the Plan pursuant to this discretionary authority. *See*
10 ECF No. 21-1 at EDWARDS 00052-000085.

11 Additionally, the Plan provides for an administrative appeal of any decisions
12 made by the Claims Administrator—including discretionary denials of enrollment.
13 *See* ECF No. 28-1 at Section 9(a) (specifying procedures to be followed for claims
14 “whether relating to a rejection [of enrollment] or the determination of benefits”).
15 To the extent that an employee disagrees with the Claims Administrator's decision
16 to exclude him or her from participating, the employee may appeal the decision to
17 the Appeals Committee, which “will provide an impartial review that takes into
18 account all comments, records and other information submitted by the claimant
19 relating to the claim.” ECF No. 28-1 at Section 9(a)(iv).
20

1 The Court finds that the discretion retained by Defendant to deny eligible
2 employees participation in the Plan based upon the needs of the business, along
3 with the existence of a comprehensive appeals process to challenge such denials,
4 sufficiently implicates an “ongoing administrative scheme.” Unlike severance
5 packages which merely provide for “a one-time, lump sum payment triggered by a
6 single event,” *Fort Halifax*, 482 U.S. at 12, the VESP Plan requires Defendant to
7 exercise a non-trivial degree of discretion in deciding which employees may
8 participate. And while the record reflects that only a handful of employees were
9 denied enrollment, the fact that some *were* denied indicates that Defendant did, in
10 fact, exercise “ongoing particularized discretion” with respect to the Plan’s
11 administration. *Velarde*, 105 F.3d at 1317. The Court concludes that the exercise
12 of this type of discretion is sufficient to “transform a simple severance agreement
13 into an ERISA employee benefits plan.” *Velarde*, 105 F.3d at 1317.

14 Furthermore, the VESP Plan is materially different from the types of
15 severance packages at issue in *Fort Halifax* and *Velarde*. In those cases, the event
16 which “triggered” the availability of severance benefits was an across-the-board
17 closure of an entire facility. *Fort Halifax*, 482 U.S. at 3; *Velarde*, 105 F.3d at
18 1315. As a result, the respective employers were merely required to “mak[e] a
19 single set of payments to employees at the time the plant[s] close[d].” *Fort*
20 *Halifax*, 482 U.S. at 12. This type of “one-time obligation,” the *Fort Halifax* Court

1 reasoned, “simply creates no need for an ongoing administrative program for
2 processing claims and paying benefits.” *Id.* In other words, “[t]o do little more
3 than write a check hardly constitutes the operation of a benefit plan.” *Id.*

4 In this case, by contrast, the “triggering” event was Defendant’s strategic
5 decision to “de-layer” its upper management level workforce. As noted above, this
6 process required Defendant to exercise discretion in determining which self-
7 selected employees would be allowed to participate in the Plan. Unlike the
8 severance packages at issue in *Fort Halifax* and *Velarde*, the VESP Plan did not
9 provide for across-the-board payments to laid-off employees. Rather, the Plan was
10 designed to provide a certain class of employees an opportunity to leave the
11 company earlier than they might have otherwise contemplated. The process by
12 which Defendant accomplished this objective was much more involved than
13 simply “writ[ing] a check to employees on their way out the door. *Fort Halifax*,
14 482 U.S. at 12.

15 Finally, it bears noting that participation in the VESP Plan was *voluntary*.
16 Defendant clearly contemplated that certain eligible employees would decide to
17 participate, while others would elect to continue working. It was presumably for
18 this reason that Defendant implemented a formal application process, provided
19 employees with a wealth of information and resources to assist them in making an
20 informed decision, and imposed an application deadline over two months after the

1 Plan was announced. Given the massive scope of the Plan—approximately 2,263
2 employees were eligible to participate (*see* ECF No. 21-1 at EDWARDS 000052-
3 000085)—it would have been exceedingly difficult for Defendant to have
4 “administer[ed] the program *without* an administrative scheme” in place. *See*
5 *Bogue*, 976 F.2d at 1323 (emphasis added). In sum, this is precisely the type of
6 employee benefit plan that “by nature requires an ongoing administrative program
7 to meet the employer’s obligation.” *Fort Halifax*, 482 U.S. at 11. Defendant’s
8 motion for summary judgment is granted as it pertains to ERISA preemption.

9 **B. Plaintiff’s Motion for Summary Judgment and Motion for**
10 **Reconsideration**

11 In light of the ruling above, the Court lacks subject matter jurisdiction over
12 Plaintiff’s breach of contract claims. Accordingly, the Court must deny Plaintiff’s
13 Motion for Summary Judgment and dismiss his claims with prejudice. The Court
14 will also deny as moot Plaintiff’s Motion for Reconsideration of the Court’s May
15 13, 2013 Order denying Plaintiff leave to amend his Complaint to include a claim
16 for violations of the State of Maryland’s Wage Payment and Collection Act, as any
17 such claim would also be preempted by ERISA.

18 **IT IS HEREBY ORDERED:**

- 19 1. Defendant’s Motion for Summary Judgment (ECF No. 25) is

20 **GRANTED.**

1 2. Plaintiff's Motion for Summary Judgment (ECF No. 20) is **DENIED**.

2 3. Plaintiff's Motion for Reconsideration (ECF No. 55) is **DENIED** as
3 moot.

4 4. All remaining deadlines, hearings and trial are vacated.

5 The District Court Executive is hereby directed to enter this Order, enter
6 **JUDGMENT** of dismissal for lack of jurisdiction, provide copies to counsel, and
7 **CLOSE** the file.

8 **DATED** June 20, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge